

APPENDIX 2

**Attorney General Executive Directive 1988-1
Concerning Law Enforcement Operations
on or Near School Property
(1988)**

DRUG FREE SCHOOL ZONE

Attorney General's Executive Directive Concerning Law Enforcement Operations On Or Near School Property

Issued August 1988

Executive Directive No. 1988-1

Whereas, drug abuse is one of the most serious and pervasive problems facing the citizens of this State; and

Whereas, school age children are especially vulnerable to and influenced by the activities of predatory drug offenders; and

Whereas, the Governor has called for a broad based and multi-disciplinary attack on both the "supply" and "demand" facets of the substance abuse problem; and

Whereas, our long term efforts to address this national problem will depend in large measure on the eventual success of programs and initiatives designed ultimately to reduce the demand for illicit substances; and

Whereas, elementary and secondary schools will serve as the principal medium for educating young people about the perils of substance abuse; and

Whereas, young citizens of this State have an undeniable and fundamental right to the advantages of a school environment which is conducive to educational goals and prerogatives and which is totally free of drug abuse and trafficking activities; and

Whereas, the Legislature by enactment of the Comprehensive Drug Reform Act of 1987 and the Drug-Free School Zone Act has provided for enhanced punishment for drug offenders who distribute to or who use children, or who operate on or near school property; and

Whereas, the Attorney General by promulgation of the Statewide Narcotics Action Plan (SNAP) has directed that the enforcement of New Jersey's drug laws shall be the number one priority of the law enforcement community, and that special emphasis shall be placed on the patrol and protection of schools and areas within drug-free school zones; and

Whereas, there is a demonstrated need for the continuation, institutionalization and enhancement of the spirit of cooperation which exists between law enforcement officials and professional educators with respect to the substance abuse problem; and

Law Enforcement Operations On Or Near School Property

Whereas, pursuant to the provisions of Chapter 5 of the Statewide Narcotics Action Plan, law enforcement officials are directed at all times to respect and appreciate the needs, concerns and rights of students and professional educators; and

Whereas, the Attorney General has established a School Zone Narcotics Enforcement Working Group, which is comprised of representatives from every level within the professional educational and law enforcement communities, and which has developed and recommended specific guidelines concerning law enforcement activities conducted on school property, including but not limited to undercover school operations, and also concerning the legal and professional responsibilities of school employees to report to appropriate law enforcement officials suspected incidents of drug use and trafficking; and

Whereas, the State Board of Education will adopt rules and regulations, and the Commissioner of Education will promulgate rules, regulations, guidelines and model agreements which will compliment and help to implement the provisions of this Executive Directive,

Now, therefore, I Cary Edwards, Attorney General of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby DIRECT that all law enforcement agencies and officers in this State shall comply with the directives, policies and procedures which are attached hereto and incorporated herein.

This Executive Directive shall take effect immediately.

Given, under my hand and seal, this 4th day of August, 1988 in the Year of Our Lord, one thousand nine hundred and eighty-eight, and of the Independence of the United States, the two hundred and twelfth.

Cary Edwards
Attorney General

Part I - Purpose

This Executive Directive is intended to ensure the uniform and aggressive enforcement of every provision of the Comprehensive Drug Reform Act, while also ensuring strict compliance with the underlying principles embodied in Directive 5.10 of the Statewide Action Plan for Narcotics Enforcement (SNAP), which provides that:

It shall be the policy of this State that no law enforcement activity or operation shall interfere with school substance abuse counselling and education initiatives. Accordingly, all undercover, surveillance and "clean sweep" narcotics operations taking place on school property shall be coordinated and approved by either the county prosecutor or the Attorney General. In the absence of compelling or exigent circumstances, no such operation shall be conducted in or on school property unless the appropriate school authorities have first been consulted. Such operations should not be undertaken without giving due consideration to their impact on the educational environment, existing substance abuse counselling programs and the relationships between school authorities, the law enforcement community and the student population.

The provisions of this Executive Directive are intended to direct law enforcement as to the manner in which all operations and activities directly affecting schools are to be conducted. The provisions of this Executive Directive are not intended to serve as an operational manual covering every aspect of law enforcement operations and procedures affecting schools. Rather, it is the purpose of this Executive Directive to set forth and reaffirm overriding State policies, and to establish an organizational framework and decision-making and consultation process by which to ensure that law enforcement officers at all times demonstrate a proper respect and appreciation for the rights and interests of students and professional educators.

It should be noted, finally, that the provisions of this Executive Directive were developed as a direct result of the specific recommendations of the School Zone Narcotics Enforcement Working Group established pursuant to SNAP Directive 5.14. The policies and procedures established in this Executive Directive are therefore the product of a frank and thoughtful dialogue between representatives at every level of the New Jersey law enforcement and professional education communities.

Part II - Statement of Policies, Findings and Objectives

1. Schools are a principal medium by which to provide young people with the personal skills and information which they will need to help them to resist the temptation to experiment with illicit substances. New Jersey's elementary and secondary schools thus emerge as a vital and perhaps the single most important component of this State's

Law Enforcement Operations On Or Near School Property

comprehensive, long term prevention program designed ultimately to alter tolerant attitudes and behavior concerning substance abuse. Accordingly, it shall be the policy of the New Jersey law enforcement community to promote and safeguard an environment which is conducive to education. No law enforcement operation, program or activity, therefore, shall be permitted to interfere with educational goals and prerogatives, which must always take precedence over traditional law enforcement objectives.

2. Law enforcement officers are required by law to use all reasonable diligence in apprehending and prosecuting offenders against the law. However, law enforcement officers must recognize that school officials and administrators share a similar but independent responsibility to provide for the safety and proper discipline of children in their charge.

3. It is essential to the success of the deterrent scheme established by the Comprehensive Drug Reform Act of 1987 that all citizens know and understand the legal consequences associated with the illicit use and distribution of controlled dangerous substances, and the efforts by law enforcement, as embodied in the Statewide Narcotics Action Plan, which are designed to increase the likelihood that all drug offenders will be identified, apprehended and subject to prosecution.

4. The Legislature, by enactment of the Comprehensive Drug Reform Act, rejected the notion that any drug offense, including simple possessory offenses, can properly be characterized as a minor or "victimless" crime. Accordingly, the Legislature established stern, realistically enforceable penalties directed against users and purchasers, without whom major traffickers would have no market or profit opportunities. The Legislature further provided for the imposition of especially stern punishment upon offenders who operate on or near schools. It shall therefore be the law enforcement policy of this State to ensure that schools and schoolyards do not become sanctuaries or safe havens for adult or juvenile drug offenders. The very presence of drug use and trafficking activities on school property results in a direct and immediate injury to the rights and interests of all law abiding members of the school community.

5. It shall be the law enforcement policy of this State, consistent with the provisions of the Comprehensive Drug Reform Act and the Code of Juvenile Justice, to aggressively enforce this State's penal statutes against all drug offenders. By arresting all drug offenders, including juveniles suspected of use and simple possession, law enforcement will serve a vital intervention function, and will thereby initiate the juvenile justice process so that the courts and appropriate substance abuse professionals can provide necessary evaluation, treatment and counselling services for drug using and drug dependent juveniles.

6. Attention has been focused on the placement of undercover law enforcement officers in schools. Such operations can serve as a vital tool in helping to identify and remove from school environments those persons who distribute illicit drugs. Such operations are also consistent with the policy objective of deterring young people from violating drug laws, and further serves to emphasize to all members of society that all persons who violate drug laws, including juveniles, are subject to arrest, prosecution and the imposition of punishment. However, an undercover school operation should not be undertaken in isolation; rather it should be part of a more comprehensive law enforcement program designed to deal with the substance abuse problem and drug trafficking activities on or near school property.

7. Law enforcement agencies contemplating an undercover school operation must recognize the risks associated with such operations, which by their nature have the potential to disrupt the educational environment and to interfere with the formation and continuation of trust relationships between members of the school community. Accordingly, it is necessary to establish uniform, minimum standards by which to ensure that all undercover school operations are planned and conducted so as to maximize their legitimate deterrent benefits, while minimizing to the greatest extent possible the risk of disruption and injury to educational goals and prerogatives.

Part III - Applicability and Effective Date

1. The provisions of this Executive Directive shall take effect immediately and shall henceforth govern the conduct of all law enforcement operations and activities occurring on school property which are undertaken by any state, county or local law enforcement agency. The effective date of this Executive Directive shall not depend upon the promulgation or final adoption of complimentary rules and regulations by the Commissioner of Education.

2. The provisions of this Executive Directive are designed to establish a framework for cooperation and consultation between the law enforcement and education professional communities, and to provide express authorization for law enforcement agencies to enter into agreements or memoranda of understanding with appropriate school officials which define the mutual rights, interests and responsibilities of the members of both professional communities with respect to law enforcement operations undertaken on school property.

3. The provisions of this Executive Directive, and the underlying policies announced herein, shall apply with respect to all elementary and secondary (junior high and high) schools located in the State without regard to whether a school is public, private or parochial. With respect to non-public schools, all references in this Executive Directive to building principals, local superintendents or other public school officials or

Law Enforcement Operations On Or Near School Property

employees shall be deemed to mean and refer to the appropriate private or parochial school counterpart or counterparts.

4. It shall be the responsibility of every law enforcement agency to review and where necessary modify its rules, regulations and standard operating procedures so as to reflect and enforce the provisions of this Executive Directive. It shall also be the responsibility of every law enforcement agency to ensure that all officers are familiar and comply with such rules, regulations and standard operating procedures as amended.

5. All operations conducted pursuant to this Executive Directive by any state law enforcement agency shall be subject to the approval of the Attorney General or his designee.

6. All operations conducted pursuant to this Executive Directive by any county or local law enforcement agency shall be subject to the approval of the county prosecutor.

Part IV - Liaisons

Each county prosecutor and each law enforcement agency having patrol jurisdiction shall designate a person or persons to serve as a liaison between that law enforcement agency and local and county school officials. Where appropriate, each law enforcement agency should designate as school liaison the agency's juvenile bureau supervisor, juvenile officer or officer assigned to handle juvenile matters. For this arrangement to work, the local superintendents of each school should similarly designate a person to serve as a liaison to the respective law enforcement agencies. The roles and functions of these liaisons are to:

- Facilitate communication and cooperation;
- Identify issues or problems that arise in the implementation of this Executive Directive and facilitate the resolution of any such problems;
- Act as the primary contact person between the schools and the affected law enforcement agencies;
- Act together in developing joint training and other cooperative efforts, including information exchanges and joint speaking engagements.
- Coordinate intervention and prevention efforts.

Part V - Law Enforcement Operations

A. Definitions

As used in this Executive Directive:

Controlled Dangerous Substance shall mean a drug, substance or immediate precursor as defined at N.J.S.A. 2C:35-2, and shall include controlled substance analogs.

Undercover School Operation shall mean a planned operation undertaken by a law enforcement agency wherein a law enforcement officer(s) is placed in a school community and poses as a member of the school community for the purpose of identifying and eventually apprehending persons engaged in the illegal distribution of controlled dangerous substances.

Planned Narcotics Surveillance shall mean a planned operation wherein a law enforcement officer(s) enters onto school property or buildings in plainclothes during operating school hours for the purpose of observing or participating in activities associated with the use, possession or distribution of any controlled dangerous substance. This term shall not include observations made by a law enforcement officer, whether in uniform or in plainclothes, from any place or property not owned by a school or school board.

Routine Patrol shall mean activities undertaken by a law enforcement officer, whether in uniform or in plainclothes and whether on foot or in a marked or unmarked vehicle, to patrol areas within a drug-free school zone (see N.J.S.A. 2C:35-7) for the purpose of observing or deterring any criminal violation or civil disturbance.

Planned Arrest shall mean an arrest or taking into custody based upon probable cause which was known to a law enforcement officer sufficiently in advance of the time of the actual arrest, whether as a result of an undercover school operation, planned narcotics surveillance, or - otherwise, so that there was sufficient opportunity for the arresting officer or any other law enforcement officer to apply for and obtain an arrest warrant, even though an arrest warrant may not have been sought or issued. The term shall also include arrests made pursuant to a "clean sweep" (i.e., e.g. multiple arrest) operation as prescribed by SNAP Guideline 5.4.

Spontaneous Arrest, in distinction to a planned arrest, shall mean an arrest or taking into custody based upon probable cause to believe that an offense is being committed in the arresting officer's presence under circumstances where the officer could not have foreseen with certainty that the specific offense would occur and thus

Law Enforcement Operations On Or Near School Property

where the arresting officer had no reasonable opportunity to apply for an arrest warrant. The term shall also include any arrest or taking into custody in response to a request by a school official pursuant to subsection G(l) of this Part.

Operating School Hours shall include the time in which a school is in session or when students are engaged in school-related activities under the supervision of professional school staff.

B. Undercover School Operations

1. Requests to Conduct Operations

a. All requests by school officials to undertake an undercover school operation in a particular school or school district should be directed to the local chief of police or, where appropriate, to the Superintendent of State Police. However, the ultimate approval of all undercover school operations shall be granted by the county prosecutor or, where appropriate, the Attorney General or his designee.

b. Any request to undertake an undercover school operation shall not be made public by either the requesting school official or the law enforcement agency receiving the request.

c. The county prosecutor or the Attorney General or his designee shall make a good faith effort to comply with all reasonable requests to initiate an undercover operation, considering the scope and nature of the substance abuse problem in a particular school or district and the availability of law enforcement resources.

d. Where the county prosecutor or the Statewide Narcotics Task Force is for any reason unable to comply with a request to undertake an undercover school operation, the county prosecutor or the Attorney General or his designee shall promptly notify the requesting school officials.

e. It is understood and agreed that the decision to decline a request to undertake an undercover school operation shall not be made public by either the requesting school official(s) or the law enforcement agency receiving the request.

f. Nothing in this subsection shall be construed to preclude law enforcement officials from initiating a request to conduct an undercover school operation pursuant to Section 2 of this Part.

2. Consultation and Cooperation

a. As a practical matter, a successful undercover school operation cannot take place without the assent and continuing cooperation of the building principal and local school superintendent, and, except as may be expressly provided herein, none shall be attempted without such assent and continuing cooperation. Accordingly, prior to the placement of any undercover officer in a school, the school building principal and the local superintendent shall be consulted unless there are compelling reasons not to consult with either of these officials. The Attorney General alone shall have the authority to determine the existence of compelling reasons not to consult with either of these officials. Where the Attorney General determines that compelling reasons exist, an alternative school official or officials shall be designated who shall be consulted in lieu of the building principal or local superintendent prior to the placement of an undercover officer in a school and throughout the course of the operation.

b. In any case where the undercover school operation has not been requested by an appropriate school official pursuant to subsection 1 of this Part, the law enforcement agency proposing the operation shall advise the building principal and local superintendent of the nature of the proposed operation and shall, to the extent possible, explain the reasons why the operation is necessary and appropriate. This explanation should include a description of the extent and nature of the suspected drug trafficking activities occurring within the school environment which would justify the operation. Law enforcement officials shall not be required or permitted by the provisions of this subsection to divulge any information received in confidence, whether from an informant or otherwise, or which would violate the laws or court rules governing the disclosure of juvenile offender information, grand jury information or information derived from electronic surveillance.

c. Undercover school operations should not necessarily be limited to schools falling within any particular region or demographic setting (i.e., e.g. rural, suburban, urban center, etc.) or any particular district factoring group (i.e., a composite measure of socioeconomic status within a geographic area). Rather, subject to the availability of resources, undercover school operations should be proposed and conducted in accordance with the provisions of this Executive Directive in any and all schools where the designated law enforcement and school officials determine that such operations would be beneficial.

d. Information provided by law enforcement to the building principal or local superintendent pursuant to subsection B(2)(b) of this Part shall be kept strictly confidential and shall not be divulged by the building principal or local superintendent to any other person without the expressed approval of the county prosecutor or, where appropriate, the Attorney General or his designee.

Law Enforcement Operations On Or Near School Property

e. No law enforcement officer shall disclose the fact that an undercover school operation has been proposed, requested or is being or has been considered with respect to any particular school or school district.

f. The building principal and the local superintendent shall be afforded the opportunity to offer specific concerns regarding the conduct of any proposed undercover school operation, and shall be given the opportunity to make general or specific recommendations as to how to minimize the impact of the proposed operation on the educational environment, existing substance abuse counselling programs and the relationship between school authorities, the law enforcement community and the student population. In developing an undercover school operation plan, as required by subsection B(2)(h), *infra*, and throughout the course of the operation, the law enforcement agency conducting the operation shall give due consideration to the concerns and recommendations offered by the building principal and local superintendent.

g. All undercover school operations must be approved in writing by the Attorney General or his designee or a county prosecutor. To ensure the integrity of the decision-making process, the law enforcement agency or department proposing the undercover school operation shall submit to the county prosecutor or to the Attorney General or his designee a written confidential plan which sets forth the procedures to be taken to provide for the security and safety of the undercover officer and to ensure compliance with all applicable provisions of this Executive Directive. Such plans shall also document all of the general and specific recommendations of the building principal and/or local superintendent, and shall indicate those steps which will be taken to implement and comply with those recommendations.

h. It shall not be necessary or required for the law enforcement agency proposing the undercover school operation to provide a copy of the confidential plan to the building principal or local superintendent, except that these school officials shall be advised whenever the law enforcement agency conducting the undercover school operation is for any reason unable or unwilling to follow any recommendation proposed by the building principal or superintendent.

i. Each plan shall specify the chain of command and identify those superior officers who will directly supervise the activities of the undercover officer. Each plan shall also designate the contact person(s) who will be available on a 24-hour basis to respond to any problems which might arise.

j. The county prosecutor authorizing the operation, or the Attorney General or his designee in the case of operations conducted by any state law enforcement agency, shall remain ultimately responsible for all aspects of the operation and shall be kept abreast of all undercover activities. The law enforcement agency responsible for

Law Enforcement Operations On Or Near School Property

conducting the undercover operation shall maintain control of the logistics of any operation once begun.

k. For statistical and recordkeeping purposes and to facilitate the development of model plans, a copy of each approved undercover school operation plan shall be transmitted to and maintained by the Statewide Narcotics Task Force.

l. A law enforcement agency conducting the undercover school operation shall provide to the building principal and local superintendent a detailed briefing concerning the logistical and recordkeeping requirements associated with successfully placing an officer undercover. The building principal and local superintendent shall be provided with the names and telephone numbers of the designated person(s) who shall be available on a 24-hour basis to respond to any problems or inquiries.

m. The Statewide Narcotics Task Force shall, by September 1, 1988, prepare and continually update a confidential manual describing in detail the required logistical forms, recordkeeping requirements and procedures designed to ensure the integrity and security of the undercover operation. This manual shall also discuss past undercover operation experiences and problems, and shall recommend procedures to avoid or minimize these problems. This manual shall be provided to all county prosecutors and may be provided on a confidential basis to any building principal or local superintendent as part of the briefing required by subsection B(2)(1) of this Part.

3. Security; Limited Disclosure Agreements; Early Termination

a. The building principal and local superintendent shall be informed as to the identity of any person assigned to an undercover investigation unless there are compelling reasons, as determined by the Attorney General pursuant to subsection B(2)(a) of this Part, not to inform either of these officials. The building principal and local superintendent, and any other school officials or employees who may be informed as to the identity of the undercover officer, will safeguard the identity of that officer and will not disclose the existence of a contemplated or ongoing undercover school operation to any person.

b. In the event that the building principal, local superintendent or any other school official or employee who may have been informed as to the existence of the operation subsequently learns of any information which suggests that the true identity of the undercover officer has been revealed, or that any person has questioned the identity or status of the undercover officer as a bona fide member of the school community, or that the integrity of the operation has been in any other way compromised, such information should be *immediately* communicated to the law enforcement officer requesting the operation.

Law Enforcement Operations On Or Near School Property

c. The school principal and local superintendent shall be advised whenever an undercover school operation has been suspended or terminated or whenever the undercover officer is permanently removed from the school environment.

4. Operation Targets; Persons Subject to Arrest

a. The purpose of an undercover school operation is to identify and apprehend persons engaged in the distribution of controlled dangerous substances on school property or to juveniles. It is recognized, however, and in accordance with SNAP Directives 5.7 and 6.10, that any person who violates the Comprehensive Drug Reform Act, including a person who commits a simple possessory, use or being under the influence offense, is subject to eventual arrest and prosecution. Nothing in this Executive Directive shall be construed to preclude the prosecutor from electing in his discretion to forego formal prosecution in favor of pursuing school disciplinary proceedings or other appropriate criminal justice alternatives, subject to the requirements of law. See Part II(5).

5. Use of Undercover Officers As School Employees

No undercover school operation shall be conducted which entails the placement of an undercover officer as a certified member of the school community without prior written approval of the Attorney General with notice given to the Commissioner of Education, or in the case of non-public schools, the chief school officer. The Attorney General shall base his approval upon a finding that 1) other law enforcement methods would not be effective, and 2) there is a reasonable articulable suspicion that adult school employees or other non-student member(s) of the school community are engaged in drug trafficking activities. In such event, and upon such findings, the underlying purpose of the operation shall not be to identify or to apprehend student offenders, but rather to identify and to apprehend suspected adult or non-student offenders. Furthermore, the confidential plan required to be prepared pursuant to Section B(2)(g) of this Part shall outline steps developed in consultation with the building principal and local superintendent which will be taken to minimize the undercover officer's contact with and impact upon the student population. No undercover officer shall be permitted to teach a formal class of instruction without the approval of the Attorney General and local superintendent, and in no event shall an undercover officer posing as a non-student member of the school community be permitted to establish or to simulate any confidential, trust or counsellor relationship with any student.

6. Arrest Procedures

No arrest or taking into custody during the course of, or as a result of, an undercover school operation shall be executed except in strict compliance with the arrest protocols prescribed by Section G of this Part.

7. Limitations on Undercover Officer Conduct

a. **Entrapment.** Every undercover officer shall be thoroughly briefed on the law concerning entrapment. See N.J.S.A. 2C:2-12. No undercover officer shall encourage or counsel any student to purchase or use alcohol or any controlled dangerous substance.

b. **Confidentiality of Treatment Records.** Every undercover officer shall be briefed on federal regulations and state policies concerning the confidentiality of treatment and substance abuse counselling program records and information. It is the policy of these regulations to strictly safeguard such records and information from disclosure, and no law enforcement activity shall be permitted in any way to interfere with, intrude upon or in any way compromise the integrity of any substance abuse counselling or treatment program.

c. **Treatment.** No undercover officer shall discourage any student from seeking drug or alcohol abuse treatment or counselling, or from reporting his or her own alcohol or substance abuse problem or dependency.

d. **Non-Participation in Treatment.** No undercover officer shall in any way participate in or attend any drug or alcohol abuse treatment or counselling program. In the event that an undercover officer is referred to or recommended to participate in a counselling or treatment program by a teacher or school staff member, the undercover officer shall report the circumstances of that referral or recommendation to his superiors and shall decline such referral or recommendation.

e. **Preservation of Teacher Trust Relationships.** No undercover officer shall engage in any activity or conversation which would require any teacher or school official to violate or compromise a trust relationship with any student.

f. **Use and Distribution Prohibition.** No undercover officer shall ingest or inhale (other than passive inhalation) any controlled dangerous substance; nor shall any undercover officer be permitted to distribute or dispense any controlled dangerous substance without the expressed approval of the county prosecutor or, where appropriate, the Attorney General or his designee.

Law Enforcement Operations On Or Near School Property

g. **Disciplinary Infractions.** It is recognized that in order to remain credible and so as to gain access to and to interact socially with persons engaged in illicit drug trafficking activities, an undercover officer cannot be expected to pose as a model student. Nonetheless, no undercover officer shall engage in any activities which unduly disrupt the educational environment, or which amount to disciplinary infractions of such a nature and magnitude so as to prevent other students from enjoying the full benefits of that educational environment. Every undercover officer shall be expected at all times to respect the rights of teachers and other students, and each undercover officer shall be briefed on the rules of conduct promulgated by the school.

h. **Romantic Involvement.** No undercover officer shall encourage or participate in any romantic relationship with any student during the course of an undercover operation.

i. **Firearms Policy.** It is understood that undercover work concerning drug trafficking activities is inherently dangerous, and, as evidenced by recent events in other states, subjects the undercover officer to the risk of bodily injury or death. Accordingly, law enforcement should take all measures which are necessary and appropriate to protect the undercover officer, as well as to protect all students with whom the undercover officer may come into contact, and to avoid potentially violent confrontations wherever possible. In general, an undercover officer should not carry a firearm or otherwise bring onto or maintain a firearm on school property. However, there may be instances where an undercover officer may be required to leave school property for the purpose of participating in an off-campus drug transaction under circumstances where the carrying of a concealed weapon is necessary and prudent, and where there would be no meaningful opportunity for the undercover officer to retrieve a weapon while en route to participate in the off-campus drug transaction. Accordingly, an exemption from the general rule prohibiting the carrying or bringing onto school property of a firearm may only be granted with the expressed approval of the officer's immediate superior unless otherwise specified in the plan approval process by good cause shown. Any firearm brought onto school property pursuant to this subsection will ordinarily be contained in a closed and fastened case locked in the trunk of an automobile operated by the undercover officer. It is assumed, moreover, that any exemption from the general weapons carrying policy established in this subsection shall only be rarely sought, and approval to carry a firearm onto school property shall only be granted where alternative means of providing adequate security or support are not feasible.

8. **Post-Operation Report**

Following the termination of every undercover school operation, the county prosecutor or the Assistant Attorney General in charge of the Statewide Narcotics Task Force shall prepare a post-operation report which shall be transmitted to the Attorney

General. The report shall discuss the results and impact of the operation and any logistical or policy problems which were encountered. The report shall also include recommendations for improved procedures in dealing with potentially recurring problems. The county prosecutor or the Assistant Attorney General in charge of the Statewide Narcotics Task Force shall solicit the comments and recommendations of the building principal and local superintendent, and these comments and recommendations shall be included in the post-operation report. The contents of a post-operation report shall be publicly disclosed, and a copy shall be provided to the building principal, local and county superintendents and the Commissioner of Education.

9. Post-Operation Seminars

To maximize the deterrent impact of an undercover school operation, the law enforcement agency conducting the operation shall make available officers to participate in seminars which, upon the invitation of appropriate school officials, may be held in the school in which the operation was conducted. The purpose of these seminars shall be to discuss with teachers, parents and/or students the nature of the completed operation, the procedures employed pursuant to this Executive Directive to minimize the intrusion into the educational environment, and to discuss the substance abuse problem from a law enforcement perspective. See SNAP Guideline 5.10. It shall be the policy of the State's law enforcement community to promote the frank and open discussion of issues concerning the need for such operations, and to solicit opinions and recommendations from teachers, parents, students and members of the community-at-large. No such seminar or lecture shall be held, however, except with the approval of the building principal or local superintendent of the school in which the operation was conducted.

10. Operational Models and Technical Assistance

a. The Statewide Narcotics Task Force shall compile information concerning the best way in which to plan and conduct undercover school operations, and shall from time to time make this information and associated recommendations available to all county prosecutors. The Statewide Narcotics Task Force shall be available at all times to provide technical assistance and advice concerning any aspect of an undercover school operation. See also SNAP Directive 5.11 (State Police will, subject to the availability of resources, make available undercover teams to support undercover school operations).

b. The Statewide Narcotics Task Force, working in conjunction with the county prosecutors, shall develop a program in which officers who had previously served in an undercover school capacity can meet with officers who have been selected to participate in an undercover school operation for the purpose of discussing in detail

Law Enforcement Operations On Or Near School Property

the logistical, security and policy aspects of the operation, and to discuss the emotional and psychological stresses associated with participating in such operations.

C. Planned Narcotics Surveillance

1. Notice and Consultation. In the absence of compelling or exigent circumstances, as shall be determined by the county prosecutor or the Attorney General or his designee, no planned narcotics surveillance operation as defined in this Executive Directive shall be conducted during operating school hours without first providing notice to and consulting with the building principal or local superintendent of the school involved.

2. Limitations; Targeted Subjects. Nothing in this Executive Directive shall be construed to prevent any law enforcement officer from making any observations from any place or property not owned by a school or school board, except that a planned narcotics surveillance or any other form of observation should, wherever possible, be limited to observing 1) those specific individuals or groups of individuals who are believed to be involved in drug trafficking activities, or 2) those specific areas or places on school property where drug use or trafficking activity is believed to occur frequently.

D. Routine Patrols

1. Aggressive Enforcement Plans. SNAP Directive 5.9 establishes that it is the responsibility of every local law enforcement agency to maintain, at appropriate times, a visible police presence within all drug-free school zones, and to file and periodically update a confidential report with the county prosecutor detailing how these zones are to be patrolled.

2. Notice to School Officials. Where a patrol plan developed pursuant to SNAP Directive 5.9 requires an officer to periodically enter onto school property or buildings, the chief operating officer of the department with patrol jurisdiction should advise the appropriate school building principal and local superintendent. It is understood and agreed that any portion of a patrol plan disclosed to school officials in accordance with this subsection shall be kept strictly confidential.

3. On-Site Reporting. Except when responding to an emergency, or where compliance with this subsection would otherwise not be feasible, no on duty police officer shall enter any school building without first complying with the procedures established by the school for the reporting of visitors. It is understood that the agreements or memoranda of understanding developed pursuant to this Executive Directive and rules and regulations to be promulgated and adopted by the Commissioner of Education may prescribe the specific on-site reporting procedures. It

Law Enforcement Operations On Or Near School Property

shall be the responsibility of each police department or agency with patrol responsibilities to make certain that all officers are familiar and comply with the reporting policies established by each school within the law enforcement agency's jurisdiction.

4. **Arrest Procedures.** No law enforcement officer, whether in uniform or otherwise, shall enter school property or buildings for the purpose of making an arrest or taking a juvenile into custody except in accordance with the arrest protocols established in Section G of this Part.

E. Police Presence at Extra-curricular Events

1. SNAP Guideline 5.3 provides that each local law enforcement agency, working in conjunction with the appropriate school officials, should provide for the presence of uniformed police officer(s) at all major school sporting events. It is understood that the procedures for complying with this SNAP Guideline are properly the subject of local agreements or memorandums of understanding entered into between the law enforcement agency and school officials. In the absence of compelling reasons as may be determined by the county prosecutor or chief executive officer of the law enforcement agency having patrol jurisdiction, uniformed police officers should not be assigned to school functions, and especially those functions occurring within school buildings, except with the approval of the building principal or local superintendent.

2. The purpose for requesting uniformed police presence on school property is not limited merely to the goal of deterring illegal drug use and trafficking activities; rather, police assistance is often requested for the purpose of maintaining order, crowd and traffic control, and other bona fide public safety reasons. All requests by school officials for law enforcement agencies to provide for a uniformed presence at any school event should be directed to the local police liaison or local chief executive officer of the law enforcement department or agency having patrol jurisdiction.

F. Referrals and Evidence Pick-up

1. **Procedures Concerning Required Referrals.** Pursuant to guidelines to be issued by the Commissioner of Education, school officials will promptly notify designated law enforcement officials whenever any school employee develops reason to believe a violation of the Comprehensive Drug Reform Act has occurred, (hereinafter referred to as a "referral"), except that school officials shall not be required or expected to refer a matter to law enforcement where a student has voluntarily sought treatment or counseling on his or her own initiative in accordance with the policies and procedures set forth in the guidelines issued by the Department of Education. For the purposes of this Executive Directive, an admission by a student of a violation of the Comprehensive Drug Reform Act which is in response to questioning initiated by a law enforcement

Law Enforcement Operations On Or Near School Property

officer or school employee shall not constitute a voluntary, self-initiated request for counseling and treatment.

2. **Nonapplicability to Treatment Program Records and Information.** Nothing in this Section shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counselling or treatment program, and such information or records shall be strictly safeguarded in accordance with applicable federal regulations and state policies.

3. **Securing Physical Evidence Pending Referral and Pick-Up.** Pursuant to guidelines to be issued by the Commissioner of Education, wherever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance, or item believed to be drug paraphernalia, school officials shall immediately advise the local law enforcement agency having patrol jurisdiction and shall secure the substance or item pending the response by that law enforcement agency to retrieve and take custody of the substance or item. School employees having custody of the substance or item must take reasonable precautions, as per local board of education procedures, to prevent its theft, destruction or use by any person. Under no circumstances shall any person destroy or otherwise dispose of any controlled dangerous substance or drug paraphernalia except by turning over such substance to the responding law enforcement officer.

4. **Prompt Response to Referrals and Request for Pick-Up; Preserving Chain of Custody.** It shall be the responsibility of the law enforcement agency summoned pursuant to subsection 3 of this section to promptly dispatch an officer to take custody and secure the controlled dangerous substance or drug paraphernalia. School officials should, in accordance with the policies and procedures set forth in the guidelines issued by the Department of Education, provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure, including the identity of any person from whom the substance or item was obtained, except that the summoned law enforcement officer shall not request information concerning the identity of the person from whom the controlled dangerous substance or item was obtained, where the substance or item was turned over to a substance abuse counsellor in the course of or as a result of diagnosis or treatment, or where: 1) the person voluntarily and on his or her own initiative turned over the substance to a school employee *and* 2) the person was not involved in distribution activities, *and* 3) the student agrees to participate in an appropriate treatment program. Nothing in this Section shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program; and such information or records shall be strictly safeguarded in accordance with applicable federal regulations and state policies.

G. Arrest Protocols

For the purpose of this Executive Directive, the term "arrest" shall include the taking into custody of a juvenile for an offense which if committed by an adult would constitute a crime or disorderly persons offense.

1. Requests by School Officials

a. All requests by any school official to summon a law enforcement officer for the purpose of making an arrest on school property, whether for a suspected violation of the Comprehensive Drug Reform Act or for a suspected violation of any other criminal statute, should be directed to the designated police liaison or to the chief of the department having patrol jurisdiction.

b. It is understood that agreements or memoranda of understanding shall be entered into between school officials and local law enforcement agencies, and that these agreements or memoranda of understanding should prescribe the preferred procedures for entering school premises for the purpose of effecting arrests.

c. It shall be the general policy of every law enforcement agency effecting an arrest on school grounds to minimize the disruption of the school environment to the greatest extent possible consistent with the requirements of public safety. Accordingly, substantial weight should be given by the law enforcement officer assigned to make the arrest to the specific recommendations of the building principal or local superintendent as to the place and manner for effecting the arrest.

d. So as to minimize any disruption of the educational environment, every reasonable effort should be made to effect the arrest in the building principal's office, or in some other designated area away from the general student population.

e. Where feasible, the responding law enforcement officer(s) should be in plainclothes, use unmarked police vehicle(s) and refrain from using a siren or flashing overhead lights. In addition, the number of responding officers should be kept to a minimum consistent with the requirements of public safety.

2. Other Spontaneous Arrests

a. In those cases in which a law enforcement agency responds during operating school hours to a suspected offense reported by someone other than the building principal or local superintendent, or where a law enforcement officer observes the occurrence of an offense on school property during operating school hours which would justify a warrantless arrest, or where a person subject to arrest retreats onto school property during operating school hours, the arresting law enforcement officer

Law Enforcement Operations On Or Near School Property

shall notify the building principal as soon as it is practical to do so. Where the arrest involves a student enrolled in the school, the building principal shall, wherever feasible, be notified before the student is taken from school grounds.

b. When effecting any spontaneous arrest on school property during operating school hours, every reasonable precaution should be taken to minimize the disruption of the school environment to the greatest extent possible consistent with the requirements of public safety. Accordingly, the policies and procedures set forth in subsection 1 of this section shall be complied with wherever it is feasible to do so.

3. Planned Arrests

a. Whenever a planned arrest is to occur on school property, the building principal or local superintendent shall be advised and consulted before the arrest occurs, and the arresting officer(s) shall comply with the policies and procedures set forth in subsection 3 of this section which are designed to minimize any disruption of the educational environment.

H. Notice of Arrests

1. Arrests of Students on School Grounds. As required by subsection 2 of this Part, whenever a student has been arrested on school property, the law enforcement officer of agency involved shall, as soon as practicable, notify the building principal. Wherever possible, such notice shall be given before the student has been taken off of school property. Where the student is a juvenile, all information concerning the circumstances of the arrest shall be provided to the building principal on a confidential basis. See N.J.S.A. 2A:4A-60c.

2. Arrests of Non-Students on School Grounds. Where a person other than an enrolled student is arrested on school property, the building principal shall be advised as to the circumstances of the offense and the identity of the offender, provided that where the person arrested is a juvenile, the law enforcement agency or officer involved shall not divulge any information which would violate the laws governing the disclosure of juvenile information.

3. Arrests of Students off School Grounds During Operating School Hours. Where a student is arrested off of school property during operating school hours, or under circumstances which would lead the arresting officer to believe that a school official was responsible for the care and custody of the student at the time of the arrest, or where the arresting officer reasonably believes that the student was in transit between school and his home at the time of arrest, the arresting officer shall as soon as is practicable notify the building principal of the school in which the student is enrolled.

All information concerning the basis and circumstances of the arrest shall be provided to the building principal on a confidential basis. See N.J.S.A. 2A:4A-60c.

I. Investigations and Grand Juries

1. Compliance with Confidentiality Regulations. SNAP Directive 5.10 establishes the policy of this State that no law enforcement activity or operation shall be permitted to interfere with any school substance abuse counselling or treatment program. Accordingly, and to ensure strict compliance with federal regulations designed to safeguard substance abuse counselling and treatment program records and information, the prosecutor's manual and grand jury manual shall be supplemented to include a detailed discussion of the applicable federal regulations. (42 C.F.R. Part 2).

2. Exemptions Subject To Attorney General Approval. No state, county or local law enforcement agency shall cause a subpoena to be issued, or apply for a search warrant, concerning records and information maintained by a bona fide substance abuse counselling or treatment program, nor shall any exemption to the federal regulations be sought in accordance with the procedures established in those regulations without the prior written approval of the Attorney General.

J. School Searches

1. It is understood that while the Fourth Amendment applies to all searches of students conducted by public officials, different legal standards are used to justify searches conducted by school officials as compared to searches conducted by law enforcement officers. See *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). Specifically, searches conducted by law enforcement officers must be based upon probable cause to believe that a crime has been or is being committed, and must further be authorized by a search warrant issued by a neutral and detached judicial officer unless the search falls into one of the recognized and narrow exceptions to the warrant requirement.

2. The United States Supreme Court in *New Jersey v. T.L.O.* recognized that school officials have a legitimate interest in maintaining discipline, and thus have the inherent, independent authority to conduct an investigation of suspected rule infractions and to subject students and student property to reasonable searches and seizures.

3. No law enforcement officer shall direct, solicit, encourage or otherwise actively participate in any specific search conducted by a school official unless such search could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement searches. Nothing in this section shall be construed to preclude a law enforcement officer from taking custody of any item or substance seized by any school employee.

Law Enforcement Operations On Or Near School Property

4. It is understood and agreed that pursuant to law and guidelines to be issued by the Commissioner of Education, school officials shall immediately notify law enforcement officers whenever a school employee comes into possession, whether as a result of a search or otherwise, of any substance believed to be a controlled dangerous substance. See e.g., N.J.S.A. 2C:35-10c. (See also Section F(3) of this Part concerning procedures for turning over substances to appropriate law enforcement officials).

5. School officials shall permit law enforcement officers upon their arrival to the scene to assume responsibility for conducting any joint and cooperative search, in which event the standards governing searches conducted by law enforcement officers shall prospectively apply.

6. It is illegal for any person to impede any law enforcement officer(s) engaged in a lawful arrest, search or seizure, whether pursuant to a warrant or otherwise. See e.g., N.J.S.A. 2C:29-1. Any questions by school officials concerning the legality of any contemplated or ongoing arrest, search or seizure conducted by a law enforcement officer on school property should be directed to the appropriate county prosecutor, or in the case of an arrest, search or seizure undertaken by a member of the Statewide Narcotics Task Force, to the Assistant Attorney General in charge.

7. Nothing in this subsection or in any other provision of this Executive Directive shall be construed to require any school official to actively participate in any search or seizure conducted or supervised by a law enforcement officer; nor shall any provision of this Executive Directive or the Attorney General's School Search Guidelines be construed to direct, solicit or encourage any school official to conduct any search or seizure on behalf of law enforcement, or for the sole purpose of ultimately turning evidence of a crime over to a law enforcement agency. Rather, it is understood that any search or seizure conducted by school officials shall be based on the school officials' independent authority to conduct reasonable investigations as provided in *New Jersey v. T.L.O.*

8. Any question by a school official concerning the law governing searches conducted by school officials should be addressed to the appropriate county prosecutor.

K. Interrogations and Interviews

1. No law enforcement officer shall direct, solicit, encourage, attend or otherwise participate in the questioning of any juvenile by school officials unless such questioning could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement interrogations and interviews. Pursuant to guidelines to be issued by the

Commissioner of Education, and subject to the provisions of Section F of this Part, all information obtained by school employees concerning the commission of an offense, whether obtained as a result of the questioning of a student or otherwise, shall be referred to the appropriate law enforcement agency, provided however, that nothing in this subsection or any other provision of this Executive Directive shall be construed to authorize or require a school employee to divulge information or records subject to the confidentiality requirements of 42 C.F.R. Part 2, or any other applicable regulation, law or rule of evidence concerning confidential and privileged communications.

2. All law enforcement officers shall comply with procedures and requirements established by law concerning interrogations and interviews of juveniles.

L. "Tiplines" and Student Watch Groups

1. "Tiplines" established pursuant to SNAP Guideline 5.8 shall be staffed by law enforcement officers, and the role of school officials with respect to the operation of such tiplines shall be limited to publicizing to members of the school community the existence and purpose of these tiplines.

2. The Narcotics Crime Prevention and Public Awareness Working Group is hereby directed to prepare in conjunction with the School Zone Narcotics Enforcement Working Group a model student watch program. Each county prosecutor and local law enforcement agency shall be responsible for assisting school officials in developing and implementing watch groups or similar student oriented crime prevention and awareness programs. Nothing in this subsection, however, shall be construed to require any school or school district to develop or implement a student watch program.

Part VI - Joint Training

A. Each county prosecutor shall be responsible for ensuring that every law enforcement officer within his jurisdiction is familiar with and complies with all of the provisions and policies set forth in this Executive Directive.

B. So as to foster and institutionalize the spirit of communication and cooperation enjoyed by the members of the School Zone Narcotics Enforcement Working Group, the Division of Criminal Justice, working in conjunction with the Department of Education and county prosecutor, shall develop and implement a joint training program to provide for the simultaneous instruction of members of the law enforcement and educational communities throughout the State. Such joint instructional programs shall at a minimum include a discussion of:

1. The provisions of this Executive Directive;

Law Enforcement Operations On Or Near School Property

2. The complimentary guidelines issued by the Commissioner of Education;
3. The nature and content of agreements or memoranda of understanding entered into between county and local school officials and law enforcement agencies;
4. The Comprehensive Drug Reform Act, focusing especially on those provisions affecting juveniles or which are designed to protect children and to displace drug trafficking activities from areas adjacent to schools;
5. The Attorney General's Statewide Narcotics Action Plan, and
6. The United States Supreme Court decision in *New Jersey v. T.L.O.* and the Attorney General's School Search Guidelines.
7. The federal guidelines on confidentiality for counseling and treatment.

Part VII - Revisions and Periodic Conferences

The School Zone Narcotics Enforcement Working Group established pursuant to SNAP Directive 5.14 shall continue to meet on a periodic basis to discuss the implementation of and compliance with the provisions of this Executive Directive, and to recommend necessary and appropriate revisions.

Each county prosecutor, working in conjunction with the county superintendent of schools, shall not less than once each calendar year organize and conduct a meeting of representatives from the law enforcement and educational communities to discuss the implementation of and compliance with the provisions of this Executive Directive throughout the county, to discuss any other matters of mutual concern, and to recommend revisions to this Executive Directive. Every chief of police, school building principal and local superintendent shall be invited to attend, along with any other persons or organization representatives who the county prosecutor believes could contribute to or benefit from the proceedings. Each county prosecutor shall thereafter issue a report to the Attorney General as to the results of the meeting, which shall include a discussion of any general or specific recommendations concerning the need for revisions to this Executive Directive.

Part VIII - Principles of Construction: Dispute Resolution Procedures

1. The provisions of this Executive Directive and any discretionary powers conferred by the provisions of this Executive Directive upon any law enforcement officer

Law Enforcement Operations On Or Near School Property

or agency shall be liberally construed to further the general purposes and policies set forth in Parts I and II.

2. Any question by a county prosecutor, the chief executive officer of a law enforcement agency, or a school official concerning the intended meaning or applicability of any provision of this Executive Directive may be addressed to the Office of Narcotics Enforcement Coordination and Planning in the Division of Criminal Justice, which is hereby designated to receive and respond to such inquiries. Where appropriate, that office shall consult with representatives in the Division of Law concerning the interpretation of any civil law or rule or regulation. Copies of all written responses to inquiries concerning any interpretation or construction of any provision of this Executive Directive shall be forwarded to the Commissioner of Education or his designee for their information and dissemination to other interested school officials.

3. Any dispute or objection as to any proposed or ongoing law enforcement operation or activity should be directed by the appropriate school official to the chief executive officer of the law enforcement agency involved. Where the chief executive officer of the agency is for any reason unable to satisfactorily resolve the dispute or objection, the matter should be referred to the appropriate county prosecutor, who is hereby authorized to work in conjunction with the county superintendent of schools and, where appropriate, the Division of Criminal Justice, to take appropriate steps to resolve the matter. The county prosecutor shall bear responsibility for the exercise of sound discretion in such matters consistent with the policies announced in this Executive Directive. Any dispute which cannot be resolved at the county level shall be resolved by the Attorney General whose decision will be binding.